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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,215	01/04/2005	Christian Auberge	AUBERGER 1 PCT	2593
25889	7590	10/18/2006	EXAMINER	
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			SUERETH, SARAH ELIZABETH	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/520,215

Applicant(s)

AUBERGER, CHRISTIAN

Examiner

Sarah Suereth

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 8,10,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed (GB 239436) in view of Witt (4953533).

Reed discloses an apparatus for igniting charcoal, including a cage having a circumferential wall with pass through openings (Fig. 1) and made of wood, a sustainable material (col. 1, lines 5,6). The shape is polygonal, with straight side walls made of rods stacked above one another, also made of a sustainable material (Fig. 2). The ends of the rods are stacked in an alternating fashion and are joined with each other (Fig. 2). The ends of the rods are mutually joined through wood dowels at each corner (Fig. 2, element E). The circumferential wall has an easily inflammable combustible on sections (col. 2, line 50).

Reed discloses in Figure 2 a bottom layer between the two lowermost layers of rods (between elements B). Reed does not disclose that this layer is made out of cardboard.

Witt discloses a self igniting combustion package for usage in a charcoal grill. Witt also discloses that the package is made out of cardboard for the advantages of retaining heat, burning readily, and commercial availability (col. 3, lines 56,57).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Reed apparatus by manufacturing the bottom layer out of cardboard as taught by Witt, in order to utilize a material with known advantages (col. 3, lines 56,57).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use cardboard for the bottom portion, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (MPEP 2144.07). See *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

3. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed (GB 239436) in view of Witt (4953533), further in view of Hartman (2981613).

As discussed above, Reed in view of Witt discloses the claimed invention with the exception of igniting aids in the a corner region of the apparatus.

Hartman discloses an apparatus for igniting charcoal, including a cage having a circumferential wall (Fig. 1, elements 11-14) with pass through openings (Fig. 1, element 31) and made of a sustainable material (col. 2, lines 12-15). The shape of the circumferential wall is polygonal, including straight side walls (col. 2, lines 37,38).

Regarding claim 10, there is a floor (Fig. 3, element 18) made of cardboard (col. 2, lines 12-15).

Regarding claim 9, there are igniting aids (Fig. 2, element 27) located on the corner region floor side, also impregnated with an easily inflammable combustible (col. 3, lines 13,14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Reed in view of Witt apparatus with the igniting aids of Hartman in order to provide an advantageous draft of air flow through the charcoal, and readily ignite the container itself (col. 1, lines 43-46).

### ***Response to Arguments***

4. Regarding applicant's argument that Reed does not teach arranging the bottom layer between two layers of rods, the examiner disagrees, as Reed shows a bottom layer A located between two separate elements labeled "B" in Figure 2. The examiner regards each stick to be a separate layer. This reads on the claimed configuration. However, the examiner also notes that the courts have held that rearrangement of parts does not distinguish over the prior art in cases where the operation of the device remains the same (In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) MPEP

2144.04). The operation of the Reed apparatus and the disclosed invention is identical. The particular placement of the bottom layer is not important, as long as it allows enough room for the container to be filled with fuel.

Regarding the argument that making the bottom layer of Reed out of cardboard would render it inoperable, the examiner notes that the weight of the Reed structure is supported by the four dowel rods (E), independent of the base (A). The base serves merely to support coals, which a cardboard structure is capable of, as evidenced by the Witt apparatus.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3749

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Suereth whose telephone number is (571) 272-9061. The examiner can normally be reached on Monday to Thursday 7:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Sarah E. Suereth  
Patent Examiner  
Art Unit 3749

  
JOSIAH C. COCKS  
PRIMARY EXAMINER